

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:13-cv-00430-MOC

RASHOD SENTELLE ROBINSON,)
)
Petitioner,)
)
Vs.) **ORDER**
)
UNITED STATES OF AMERICA,)
)
Respondent.)

THIS MATTER is before the court on petitioner's Motion to Vacate, Set Aside, or Correct Sentence.

In his § 2255 motion, which is signed under penalty of perjury, petitioner raises claims of ineffective assistance of counsel. In one claim for relief regarding ineffective assistance of counsel, petitioner avers that his trial attorney failed to file a direct appeal from his criminal judgment although petitioner instructed him to do so. The government agrees that petitioner is likely entitled to relief based on petitioner's averment regarding his instruction to his trial attorney to file a notice of appeal. Failure to file a direct appeal following an instruction to do so is per se ineffective assistance of counsel and prejudice to petitioner is presumed notwithstanding the potential merits of the appeal or the possible waiver of appellate rights. Evitts v. Lucey, 469 U.S. 387, 391-405 (1985); United States v. Poindexter, 492 F.3d 263, 269 (4th Cir. 2007).

Because it appears that petitioner has not had the benefit, if any, of a direct appeal from his criminal judgment, the court will grant his motion to vacate solely for the purpose of entering an amended judgment from which he may file a timely notice of appeal. Petitioner's remaining

claims will be dismissed without prejudice and the terms of her original judgment will remain unchanged.

ORDER

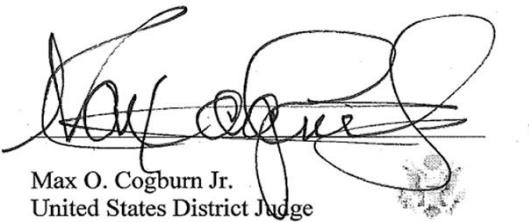
IT IS, THEREFORE, ORDERED that petitioner's Motion to Vacate is **ALLOWED** in part. Petitioner's criminal judgment will be vacated and an amended judgment will be entered from which petitioner may file a notice of appeal to the United States Court of Appeals for the Fourth Circuit.

IT IS FURTHER ORDERED that petitioner's remaining claims in his Motion to Vacate will be **DISMISSED** without prejudice to his ability to pursue such claims following conclusion of his appellate proceedings, if any.

IT IS FURTHER ORDERED that the Clerk of Court is directed to enter an amended judgment which contains the same terms as the original criminal judgment filed in 3:10cr226 and is further directed to close this civil case.

Petitioner is instructed that he shall have fourteen (14) days following entry of the amended judgment in order to file his written notice of appeal with the Clerk of Court.

Signed: October 8, 2013



Max O. Cogburn Jr.
United States District Judge